IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1420 of 1983

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROHIT TRADING CORPORATION [DECD. THRO HEIRS AND L.R.]

Versus

ARUNKUMAR HARIBHAI AGRAWAL

Appearance:

1. Civil Revision Application No. 1420 of 1983

MR KV SHELAT for Petitioner No. 1-1/4

MR PM RAVAL for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/03/2004

ORAL JUDGEMENT

By filing this revision, the petitioner has challenged the judgement and decree passed by the trial

Court by which the suit for possession is decreed and the said decree is also confirmed by the appellate court in Appeal. The present revision application is filed by the original tenant of the suit premises, who has died during the pendency of this revision and his heirs are brought on record. The suit of the plaintiff for possession and arrears of rent was decreed. An appeal against the said decree was preferred, which was dismissed by the appellate Court, against which this revision is preferred.

2) Mr.Shelat appearing for the heirs of the original tenant submitted that since the petitioners are not in a position to comply with the conditional order of the Court by which the decree of the lower Court is stayed on usual terms and since they are not in a position to comply with the interim order of this Court, which is regarding payment of arrears of mesne profit, the petitioners are handing over the possession of the suit premises to the respondent. He has handed over the key of the suit premises to Mr.Raval, who is appearing for the landlord. Mr.Raval submitted that he is accepting this key without prejudice to the rights and contentions of the decree holder to execute the decree in connection with arrears of rent, as well as mesne profit and municipal taxes. Since at present Mr.Shelat has handed over the possession of the suit premises to Mr.Raval, who is appearing for landlord, this Court is not required to examine any other question, regarding execution proceedings, which are yet to be filed as and when any execution petition is filed by the decree holder for mesne profit as well as for municipal taxes and arrears of rent, the executing court shall decide all these questions in accordance with law. Only decree for possession stands satisfied in view of the handing over the key by Mr.Shelat to Mr.Raval.

3) Mr.Shelat submitted that in order to see that no further liability of arrears of rent is fastened on the present petitioners, the petitioners have handed over the key of the suit premises. In view of this, it will be open for the parties to point out to the executing Court that the decree for possession is satisfied by way of handing over the paper possession of the suit premises.

4) According to Mr.Raval, as the premises is under the seal of the Municipal Corporation, the question of payment of municipal taxes is required to be examined by the executing Court, as and when the occasion arises and regarding arrears of rent as well as mesne profits same are required to be decided by the executing Court.

5) In view of the above order, Mr.Shelat, who is appearing for the petitioners wants to withdraw this Civil Revision Application. Permission to withdraw this revision is granted. Accordingly, this Civil Revision Application is disposed of as having been withdrawn. Rule is discharged. Interim relief stands vacated. No costs.

6) Record and Proceedings are ordered to be sent back.

(P.B.Majmudar,J.)

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